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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1975

No. 75-136

PEOPLE OF THE STATE OF CALIFORNIA
ex rel. EVELLE J. YOUNGER,
Attorney General,
Petitioner,

vs.

TAHOE REGIONAL PLANNING AGENCY,
TED JENNINGS and OLIVER KAHLE,
Respondents.

BRIEF OF RESPONDENT TED JENNINGS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I

QUESTION PRESENTED

Under the provisions of the Tahoe Regional Planning Compact and the Land Use Ordinance adopted by the Tahoe Regional Planning Agency (hereinafter TRPA), when the TRPA, in reviewing a private construction proposal, does not, within sixty (60) days, reach a "majority vote of the members present

representing each state" to either approve, modify or reject that proposal, is that proposal "deemed approved"?

II

STATUTES INVOLVED

This case involves an interpretation of the TRPA Land Use Ordinance (relevant portions of which are set forth in Appendix A) and the TRPA Compact, Public Law 91-148, 83 Stat. 360 (1969) (Pet. Appendix C).

While other provisions are involved, the case primarily involves a reading of §4.00 of the Land Use Ordinance and Article III(g) and Article VI(k) of the Compact.

Article III(g) (the "dual majority" provision) of the Compact provides as follows:

> "A majority of the members of the governing body from each state shall constitute a quorum for the transaction of the business of the agency. A majority vote of the members present representing each state shall be required to take action with respect to any matter. The vote of each member of the governing body shall be individually recorded. The governing body shall adopt its own rules, regulations and procedures.

Article VI(k) (the "60 day rule") of the Compact provides as follows:

> "Whenever under the provisions of this article or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any proposal, public or private, the agency shall take final action, whether to approve, to require modification or to reject such proposal, within 60 days after such proposal is delivered to the agency. If the agency does not take final action within 60 days, the proposal shall be deemed approved."

III

STATEMENT OF THE CASE

The resolution of this case will not be found in quotations from Mark Twain, excerpts from Senate reports or legislative findings and declarations. Instead, the clear, unequivocal and unambiguous language of the Compact and the Land Use Ordinance are determinative. Indeed, in denying Petitioner's motion for a preliminary injunction, the District Court found the language so clear and certain that "there is no room for an interpretation." The Ninth Circuit Court of Appeals affirmed based on the "plain meaning of the Compact and the intent of its architects."

The basic facts are not in dispute. Respondent Jennings filed an application for an administrative permit with the "permit-issuing authority" as designated by the TRPA Land Use Ordinance. In the present case the "permit-issuing authority" was the Board of Commissioners of Douglas County, Nevada. After an extensive hearing, the Douglas County Commissioners, by unanimous vote, granted Jennings an administrative permit and made specific findings that

the project was in conformance with all TRPA ordinances and would create substantial environmental benefits on the land involved and to other lands in the area. Pursuant to the TRPA Land Use Ordinance, the TRPA permit-issuing authority also granted a height variance, specifically finding that such additional height would better promote protection of the environment of the area.[1]

The Jennings project was then submitted for review to the Nevada Tahoe Regional Planning Agency (hereinafter NTRPA), a Nevada State Agency authorized and empowered to exercise environmental controls over gaming establishments on the Nevada side of the Tahoe Basin.[2] Nevada Revised Statutes §278.780 et. seq. The NTRPA approved the Jennings project.

[1]Appellant's statement that Respondent's project will have serious long-term adverse environmental effects is not only totally irrelevant to this action, but is completely untrue. The Board of Commissioners of Douglas County, and the Nevada TRPA both found Respondent's project to be in compliance with all ordinances and environmental regulations of Douglas County and the TRPA, and that it would not have any adverse environmental consequences. In addition, the Nevada State Bureau of Environmental Health, which is in charge of regulating air and water quality throughout Nevada, approved this project and found that it met or exceeded all applicable water and air quality standards. The standards applied by the Bureau of Environmental Health are more stringent than the Standards of both the State of California and the Federal government.

[2]There is a serious question as to whether the TRPA even has jurisdiction to review gaming projects in light of Article VI(a) of the Compact which mandates that any business or recreational establishment which is required by state law to be individually licensed (such as a gaming establishment) and which is to be constructed on land so zoned in 1968 (Respondent's land was so zoned) is a permitted and conforming use under every plan, ordinance, rule, regulation or policy of the TRPA. This issue will be presented to the District Court should this action proceed.

Thereafter, on June 13, 1974, the administrative and variance permits granted by Douglas County and approved by the NTRPA were submitted to the TRPA for review pursuant to §4.32 of the Land Use Ordinance. On July 25, 1974 the Jennings permit application came on for hearing before the TRPA. After an extensive hearing wherein evidence and testimony were presented, a motion was made to approve the Jennings permits. A majority of the Nevada representatives voted in favor of this motion (3-2) and a majority of the California representatives present voted against this motion (5-0). A motion was then made to reject the Jennings permits. A majority of the Nevada representatives present voted against this motion (3-2) and a majority of the California representatives present voted in favor of this motion (5-0). Thus, the TRPA did not approve or reject the Jennings project by a majority vote of the members present representing each state (i.e., a "dual majority").

In accordance with the established practice of the TRPA and the clear language of the Compact and Land Use Ordinance, this vote resulted in no action to approve, modify or reject being taken and the proposal was therefore "deemed approved" after the expiration of 60 days. Compact Articles III(g) and VI(k); Land Use Ordinance §4.32. This appeal challenges the TRPA's own long-standing interpretation of its own Ordinance, and of the Compact.

IV

REASONS WHY A WRIT OF CERTIORARI SHOULD NOT BE GRANTED

The Ninth Circuit Court of Appeals' decision in this case is not in conflict with a decision of another court of appeals or with any law of the states of Nevada or California or with any decision of this Court; neither has the Ninth Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for the supervision of this Court. California's only apparent basis for a writ of certiorari is that the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court. Supreme Court Rule 19(b).

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1. PETITIONER'S CASE IS WITHOUT MERIT

California is not asking for an interpretation of the TRPA Compact, but rather that the express provisions and intent of the Compact be ignored. California's position is not only inconsistent with the long-standing practice of the TRPA (which is entitled to judicial deference, absent compelling circumstances, *New York State Dept. of Social Services v. Dublino*, 413 U.S. 405 (1973)), it defies the express language of the Compact and the Land Use Ordinance.

Compact Article III(g) provides, in as clear a statement as the English language allows, that a majority vote of the members representing each state (i.e., a dual majority vote) is necessary to take action with respect to any matter. Compact Article VI(k)

provides in equally clear language, that in reviewing a proposal the TRPA must not only take action, but it must take final action to approve, modify or to reject within 60 days.

In the present case the TRPA did not obtain a dual majority vote and was therefore unable to take final action to approve, modify ar reject. California contends that this failure to take action amounts to final action to reject the proposal. However, just such a circumstance was contemplated by the Compact's draftsmen and an express provision was made therefor Article VI(k), the existence of which California refuses to acknowledge, provides that when the TRPA does not take final action to approve, modify or reject (by failing to reach a dual majority vote or otherwise), the proposal "shall be deemed approved." California would have this Court interpret "approved" to mean "rejected."

California states that the second sentence of Article III(g) establishes "the requisite vote which must be recorded for any proposal to be passed or adopted in the name of the body." (Pet., page 17). Such a characterization of Article III(g) is, at best, misleading. Article III(g) establishes the necessary vote to take action with respect to any matter, which certainly would include the taking of final action to approve or reject in reviewing a permit. The present case does not involve the adoption by the TRPA of anything; rather this case involves a review by the TRPA of a permit that was issued by the duly authorized permit-issuing authority.

California contends that a dual majority vote is required only to approve a permit that has been issued by the permit-issuing authority, and if no dual majority is received to approve, then the permit is rejected, even though there was no dual majority vote to reject. California, thus, argues that a permit can be rejected without a majority vote of the TRPA members representing each state. Yet, Article III(g) requires a dual majority vote to take action on any matter. Therefore, under California's interpretation a project can be rejected without the TRPA taking action. This is directly contrary to Article VI(k) which provides that if action is not taken, the project is deemed approved.

The effect of the failure of the TRPA to reject or approve by a dual majority vote is the same as if the TRPA had never voted, to-wit: no action is taken. When no action is taken the proposal as affirmatively approved by the permit-issuing authority is deemed approved. Compact Article VI(k).

Reading the Compact in accordance with its clear language does not return the region to the pre-Compact era. Prior to the TRPA each of the several counties surrounding Lake Tahoe had its own zoning and land use regulations and master plan. The primary purpose of the TRPA was to adopt a uniform basin-wide land use plan so that development of the Tahoe basin would proceed in accordance with a single master plan. The land use regulations adopted by the TRPA set the minimum standards in the Tahoe basin and supersede all existing regulations of the counties,

unless the county regulation is more restrictive. Compact Article VI(a). The counties are mandated by the Compact to comply with and enforce the regulations and standards of the TRPA. Compact Article VI(b). The TRPA Land Use Ordinance, which designates the counties as the permit-issuing authority, also mandates compliance with the TRPA master plan. (Land Use Ordinance §§ 2.00, 8.30). All development within the Tahoe basin must be in accordance with the TRPA basin-wide master plan.[3]

California's suggestion that one state could approve strip mining in the other state over the other state's objection is absurd. No construction or development is allowed in the Tahoe basin if it does not comply with the TRPA master plan and Land Use Regulations. If a project is not in compliance with the TRPA master plan, the local government permit-issuing authority could not approve it. In most cases, projects must also be approved by either the California Tahoe Regional Planning Agency or the Nevada TRPA prior to review by the TRPA. In addition, projects must comply with all applicable state and federal environmental laws.

The California Attorney General continually infers that the public officials charged with the enforcement of the Compact will breach their public trust and violate the law in issuing permits. However, if a county board of commissioners issues a permit that is in

[3]The subject property is zoned "Tourist Commercial" under the TRPA Land Use Ordinance; a hotel-casino is a permitted use in a Tourist Commercial classification.

violation of the TRPA regulations, any injured party could seek judicial review to set that illegal action aside, just as judicial review is available to insure that every public official performs his duty in accordance with the law. The present case is not, however, seeking any such judicial review of the action of Douglas County, the permit-issuing authority. Apparently, the California Attorney General feels that he is unique among public officials, in that only he can be trusted to perform his duty in accordance with the law. The within action certainly dispels that myth, since the California Attorney General is seeking to have the law enforced as he thinks it ought to be, rather than as it is written.

Both the District Court and the Ninth Circuit Court of Appeals indicated in no uncertain terms that the Compact must be enforced as it is written and that the Court was not empowered to rewrite the Compact. The legislatures of the states of Nevada and California and the Congress of the United States and the TRPA, in their collective legislative wisdom, determined that when the TRPA was unable to reach a dual majority vote in reviewing a proposal that has been approved by the permit-issuing authority, that proposal is deemed approved. California is asking this Court for legislative rather than judicial relief.

2. THE DETERMINATION OF THIS CASE IS NOT EVEN DEPENDENT UPON FEDERAL LAW, MUCH LESS ON IMPORTANT QUESTION OF FEDERAL LAW.

The outcome of this case is, to a significant extent, dependent upon the language of the TRPA Land Use Ordinance rather than the Compact. Both the District Court and the Ninth Circuit relied on and emphasized this Ordinance. Indeed, the issue which California now contends is critical, i.e., whether the TRPA's review is "appellate" or "de novo," is dependent entirely on an interpretation of the Land Use Ordinance. That this action is based on the TRPA Land Use Ordinance is evidenced by California's attempt to rely on the Petition for Rehearing filed by the TRPA which primarily consists of a detailed analysis of the provisions of the Land Use Ordinance.

Based upon the language of the Ninth Circuit, in the case *League to Save Lake Tahoe v. TRPA,* 507 F.2d 517 (1974), Cert. den. ..... U.S. ....., 43 L.Ed.2d 654 (March 17, 1975), the United States District Court for the District of Nevada recently held that the TRPA ordinances are not laws of the United States and do not raise federal questions. *League to Save Lake Tahoe v. B.J.K. Corporation,* Civ.No. 7587BRT[4]. Thus, the TRPA Land Use Ordinance, on which California's claim primarily relies, is not even a federal law, must less of sufficient federal import to warrant review by this Court.

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[4]This case has been appealed to the Ninth Circuit Court of Appeals.

3. THERE IS NO IMPORTANT FEDERAL QUESTION

The interpretation of the dual majority provision of the TRPA Compact is not of great federal significance. Indeed, this Court recently denied certiorari on the question of whether the Compact is a law of the United States so as to confer federal jurisdiction, which surely is of greater federal import than an interpretation of specific provisions of that Compact. *League to Save Lake Tahoe v. TRPA*, 507 F.2d 517 (1974), Cert. den. ..... U.S. ....., 43 L.Ed. 2d 654 (March 17, 1975).

California indicates that this is an interstate controversy and this Court should resolve this dispute between Nevada and California. However, the State of Nevada is not a party to this action. Indeed, if this were a controversy between the two states, then neither the District Court nor the Court of Appeals would have jurisdiction. 28 USC 1251(a)(1).

California attempts to place great significance on the interstate aspects of this case, calling it "an action unprecedented in our multi-state republic." (Pet., page 8). However, the parties to this action are of no legal significance. This is simply a case of interpretation of the language of the TRPA Compact and the Land Use Ordinance adopted pursuant thereto. California as a party to the Compact certainly has standing to seek enforcement and interpretation of the Compact. California's standing or authority to bring the within action has never been challenged and is not in issue. The only thing unprecedented about this case is that California would not ask this Court to review a case that so totally lacks merit.

4. THE NATURE OF THE TRPA REVIEW IS OF NO CONSEQUENCE

California argues that the "crux" of this case is the pseudo-issue of whether the review conducted by the TRPA is de novo or appellate in nature, as if the language of the Compact somehow changes when the review is de novo. The nature of the TRPA review is determined exclusively by the Land Use Ordinance, which is not even federal law. *League to Save Lake Tahoe v. B.J.K. Corporation, supra.*

California's reliance on the TRPA's Petition for Rehearing is misplaced. The TRPA did argue that based on the Land Use Ordinance, the nature of its review is de novo; however, the TRPA did not contend that the nature of the review, in any way, affected the ultimate decision. The TRPA expressly recognized that the Ninth Circuit based its determination on the "action" and "voting" provisions of the Compact. The TRPA only asked for a clarification or modification of the language of the opinion rather than the result. The TRPA has, since its inception, interpreted the provisions of the Compact and Land Use Ordinance with respect to what constitutes "final action" contrary to California's position herein, even though the TRPA believes that it conducts a de novo review. It is therefore apparent that the TRPA does not place any significance on the nature of the review with respect to what constitutes final action to approve, modify or reject. California asks this Court to defer to the TRPA's interpretation of the Compact and Ordinance only when that interpretation is convenient to its position.

Regardless of the type of review, the Compact still requires a dual majority vote to take action on any matter and if there is no action to approve, modify or reject within 60 days, then the proposal is deemed approved. Section 4.00 et seq. of the Land Use Ordinance provides that permits shall be issued by the permit-issuing authority. Whether the review subsequently undertaken by the TRPA is de novo or appellate, if the TRPA does not take action to reject that permit by a majority vote of the members of each state (the only way that the TRPA can take action) then the permit issued by the permit-issuing authority is deemed approved. The TRPA cannot void the permit issued by Douglas County without a dual majority vote to reject that permit. The opinions of the District Court and the Court of Appeals are clearly based on the language of the Compact rather than the nature of the TRPA review.

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5. THIS COURT HAS BY IMPLICATION REJECTED THE MERITS OF THIS CASE

Both the District Court and the Ninth Circuit required California to post a $3.5 million dollar bond as a condition of an injunction pending appeal. California sought relief from this Court on the basis that it had a strong likelihood of success on the merits and that it was going to file a petition for writ of certiorari on the question of the validity of said bond. *California v. TRPA*, Sup. Ct. No. A-422. Despite its representation to this Court, California did not file

said petition for writ of certiorari; neither did California prevail on the merits.

California presented the merits of this case in its motion to The Honorable Justice William O. Douglas. Justice Douglas initially enjoined respondents pending the filing of responses. After respondents filed their responses, which were in part addressed to the merits of the within appeal, Justice Douglas ruled that California must post the $3.5 million dollar bond as a condition of an injunction pending appeal. Justice Douglas's order, rejected, by implication if not directly, California's position on the within appeal. A further review of this case by this Court would serve no purpose.

V

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Court should deny petitioner's Petition for Writ of Certiorari.

Dated, Reno, Nevada,
August 20, 1975.

McDonald, Carano, Wilson,
Bergin & Bible,
Robert L. McDonald,
John Frankovich,
Attorneys for Respondents.

(Appendix Follows)

APPENDIX

Appendix

TAHOE REGIONAL PLANNING AGENCY
ORDINANCE NO. 13

An Ordinance Amending Sections 1.00, 3.00, 5.10, 7.22, 7.82, 8.13, 8.25, 8.27, 8.28, 9.11, 9.12, 9.13, 9.14, 9.21, 9.22, 9.24, 9.30 and 9.31, and Adding a New Section Providing That Violations of the Provisions of the Ordinance Shall Constitute a Misdemeanor to Ordinance No. 4 as Amended by Ordinance No. 8, Entitled, "An Ordinance Establishing Regional Land Use Districts and Regional Land Capability Districts; Providing Population Density Controls and Land Coverage Limitations; Providing for the Issuance of Permits Concerning Land Uses, Structures and Land Coverage; Providing for Non-Conforming Alterations, Uses and Structures; Providing for Variances; and Providing for Other Matters Properly Relating Thereto."

The governing body of the Tahoe Regional Planning Agency does ordain as follows:

Section 1.00 Findings

The governing body of the Tahoe Regional Planning Agency finds that in order to effectuate the adopted regional plan, it is necessary to adopt this ordinance establishing regional land use and land capability districts; providing population density controls and land coverage limitations; providing for the issuance of permits concerning land uses, structures, and land coverage; providing for non-conforming alterations, uses and

structures; providing that violations of the ordinance shall constitute a misdemeanor; providing for variances; and providing for other matters properly relating thereto. The governing body further finds that the provisions of this ordinance are in accordance with the provisions and purposes of the Tahoe Regional Planning Compact.

Section 2.00 General Provisions

2.10 *Compliance*

Land use, land coverage, and population density standards shall be in compliance with the terms of this Ordinance, and permits respecting same shall be granted or denied in conformity with the provisions of this Ordinance.

2.11 The provisions of this Ordinance establish the minimum standards applicable within the Region to the subject matters of the Ordinance. Any political subdivision may enforce equal or higher standards within its territory and this Ordinance shall not be deemed a limitation or repeal of any other powers granted to the governments of the Tahoe Region by the United States or the respective states.

2.20 *Interpretation and Severability*

The provisions of this Ordinance shall be liberally construed to effectuate their purposes. If any section, clause, provi-

sion or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

2.30 *Short Title*

This Ordinance may be cited and referred to as the Land Use Ordinance.

Section 3.00 Definitions

For the purposes of this Ordinance, certain terms or words used herein shall be interpreted as follows: Words in the present tense include the future; words in the singular number include the plural number, and words in the plural number include the singular number. The word "shall" is mandatory, not permissive, unless the context indicates that a directory meaning is intended.

Accessory Uses—A use, building or other facility customarily a part of any permitted use that is clearly incidental and secondary to the permitted use and which does not change the character of the permitted use, or affect other properties in the vicinity.

Administrative Permit—A permit issued by a permit-issuing authority in accordance with its procedures to enable special consideration of whether a use, activity, building, structure, height, land coverage

or other aspect of use or development will be permitted under the provisions of this Ordinance.

Agency — The Tahoe Regional Planning Agency.

Building—Any structure built and maintained for the support, shelter, or enclosure of persons, animals, or property of any kind.

Bulk Storage—Activities and uses with associated structures devoted to the storage of products and substances in bulk quantities such as lumber, oil, gasoline, building materials, and vehicles, and warehouses for consumer and other products.

Child Care Nurseries—Buildings and other structures, and land, designed to be used for the care of four or more children, with or without compensation.

Collective Household—A group of at least two, but not more than six, persons who are unrelated by blood, marriage or adoption, living together as an independent housekeeping unit.

Commercial, General—The retail or wholesale sale or rental of any article, substance or commodity, including building materials and vehicles and the provision of all commercial services including financial institutions and personal commercial services.

Commercial, Limited—The retail sale or the rental of any consumer article, substance or commodity, but not including service stations and establishments for the sale of building materials other than hardware, automotive vehicles, and other items of significant size and prominence that are normally displayed or stored outside of a building. Also, the provisions of personal commercial services such as barber shops, beauty shops, photography studios, dry cleaners, and laundries.

Cultural Facilities—Uses, and facilities such as libraries, museums, art galleries, auditoriums, zoological gardens, historic sites and monuments.

Organized Recreation Camps—Land or premises containing structures designed to be used for organized camping.

Outdoor Amusement Facilities — Outdoor amusement facilities are those that characteristically contain a high proportion of structures, improvements and land coverage in relation to uncovered land. machines and other devices, and are designed to be used by a large number of persons in relation to land area.

Outdoor Recreation—Uses and facilities pertaining to recreation activities that are carried on primarily outside of structures.

Outdoor Recreation Concessions—Uses and facilities ancillary to outdoor recreation uses, such as gasoline pumps at piers and marinas, and boat rental and food and beverage facilities at public beaches.

Overhead and Underground Utilities—Electric power transmission lines, telephone lines, and any other pipes or conduit and appurtenances used for the transmission of gas, water, sewage, or any other substance.

Parcel—An area of contiguous land owned by a person.

Permit-Issuing Authority—The local government within the territory of which the land use district, land capability district, proposed construction, use or land coverage is located, which government has the authority and obligation to enforce the standards established by this Ordinance.

Person—An individual, partnership, corporation, business association, or group of individuals and any governmental entity.

Private Recreation Areas—Land or premises designed to be used exclusively by owners and renters of single family dwelling units and their guests, and occupants of transient dwelling units or multiperson dwellings, that contain such facilities as tennis courts, playfields, swimming pools, clubhouses, bathing beaches, and piers.

Professional Office—An office for the conduct of professional services such as: accounting, advertising, architectural, legal counsel, drafting, dental, engineering, insurance, medical, and real estate. Professional services do not include activities normally involving animals, commercial vehicles or intensive patronage by the general public such as veterinary, general contracting, barber shops, beauty parlors, and pharmacies.

Public and Quasi-Public—Uses and facilities pertaining to communication, transportation, utilities, public services and education, including fire and police protection facilities, cultural facilities, religious facilities, schools, medical facilities, post offices, telephone, telegraph, television and radio systems, gas and electric systems, water, sewage, and disposal systems.

Quarry—Buildings, structures and land used for the removal of rock, sand, gravel, soil, aggregates and the like for sale or for use in connection with development activity elsewhere.

Recreation Vehicle Park—A parcel of land under one ownership which has been planned and improved and which is let or rented or used for the temporary placement of camp trailers and camping

vehicles which are utilized for non-permanent residential use.

Religious Facilities—Buildings, other structures, and land land designed to be used for purposes of worship.

Residential — Uses and facilities pertaining primarily to the occupation of buildings for living, cooking, sleeping and eating by permanent residents, persons who own recreation homes, and tenants and guests of such residents and persons.

Resource Management and Agriculture—Uses and facilities for the utilization of natural resources such as forest products removal, grazing and mineral extraction.

Service Stations—Uses and facilities designed to provide services for motor vehicles and operations incidental thereto limited to retail sale of gasoline, oil, tires, batteries and accessories, automobile washing, tire changing and repairing, battery service, radiator cleaning, installation of minor accessories, lubrication of motor vehicles, brake repairs, and the testing, adjustment and replacement of such equipment as carburetors, coils, condensors, distributor caps, fan belts, filters, generators, points, rotors, spark plugs, voltage regulators, fuel pumps, water hoses, and wheel balancing.

Single Family Dwelling Unit—One room or group of two or more rooms, other than in a mobile home, containing one or more bedrooms, with not more than one kitchen, designed to be occupied permanently as an independent housekeeping unit by one family or one collective household with facilities for living, cooking, sleeping and eating.

Single Family House—A detached building containing one single family dwelling unit.

Skiing Facilities — Uses and facilities pertaining to skiing including, but not limited to, runs, towlines, cables, cars, warming huts, caretaking quarters, day lodges, shops for sale and rental of skiing equipment, ski pro shop, first aid stations, ski school assembly and instruction areas, and lounges and associated eating and drinking establishments, but not including residential or tourist residential uses and facilities.

Structure—Anything constructed or built, or any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which requires location on the ground or is attached to something having a location on the ground.

Subdivision—Any real property which is divided into tv , (2) or more condominiums or into five (5) or more lots, or in which five (5) or more undivided interests are created or are proposed to be created.

Tourist Residential—Uses and facilities pertaining primarily to the use of buildings and portions of buildings for living and sleeping by tourists and other transient visitors who rent by the day or week.

Tract Office—A structure other than a trailer or mobile home used to house activities relating to the sale or rental of dwelling units contained in the particular subdivision or other development in which the tract office is located. A tract office does not include a facility used for the purpose of the sale or rental of real property located outside the subdivision or other development with which it is primarily associated.

Transient Dwelling Units—One bedroom or a group of two or more rooms containing no more than one bedroom, and designed to be rented primarily by the day or week and to be occupied temporarily by one or more individuals whose permanent residence is elsewhere. Hotels and motels normally contain transient dwelling units.

Transportation Facility—Buildings, structures and land used for such purposes as bus terminals, railroad stations, and motor vehicle freight terminals, but not including airports or heliports.

Undeveloped Campgrounds—Land or premises designed to be used for temporary occupancy by campers traveling by foot or horse which may contain such facilities as fireplaces, but do not contain such facilities as are provided at Developed Campgrounds.

Water Crossing or Diversion Structures—Any structure designed to alter or cross any stream, river or other body of water.

Section 4.00 Permit Procedure

4.10 *When Required*

No person shall undertake or carry out any of the following activities without first obtaining a permit from the permit-issuing authority:

(1) Any construction or use involving the creation of land coverage on an area greater than 200 square feet;

(2) any construction or use for which an administrative permit or variance permit as required by this Ordinance must first be issued by the permit-issuing authority.

4.20 *Application Form*

4.21 Applicants for permits shall submit the application and information required to the permit-issuing authority which shall review the application in accordance with the requirements of this Ordinance, and recommend any changes which are necessary to satisfy the standards established by this Ordinance. No permit shall be issued unless there is compliance with all the requirements of this Ordinance.

4.22 *Information Required*

Applicants for permits required under Section 4.10(2) shall furnish a Land Capability Report prepared by a person or firm qualified by training and experience to have expert knowledge of the subject. The permit-issuing authority shall determine the adequacy of the Report and may require the submission of further information where necessary. The Report shall contain information as provided in Section 8.27 to the extent necessary to show that the standards required for the particular administrative permit or variance permit sought by the applicant have been satisfied and any

other information required by this Ordinance and by the adopted Rules and Regulations of Practice and Procedure of the Agency.

4.30 *Agency Review of Permits*

4.31 Permits required pursuant to Section 4.10(1), and any other permit required by the permit-issuing authority but not required by this Ordinance, shall become final without the necessity of review by the Agency, *provided, however,* that the fact that a permit becomes final without the necessity of review by the Agency shall not foreclose any judicial action authorized by the Tahoe Regional Planning Compact to enforce the provisions of this Ordinance.

4.32 Administrative permits and variance permits required pursuant to Section 4.10(2) and issued by the permit-issuing authority shall be subject to Agency review, and upon review of any such permit the Agency shall take final action, whether to approve, to require modification or to reject such permit within 60 days after such permit is delivered to the Agency. If the Agency does not take final action

within 60 days, the permit shall be deemed approved.

4.33 When an application for a permit is received by the permit-issuing authority, it shall immediately notify the Agency in writing of the following: (1) the fact that an application has been received; (2) the type of permit for which the application is made; and (3) the nature, scope and location of the construction, use, or land coverage proposed. Upon receipt of such documents, the Executive Director of the Agency and its staff shall cooperate with the permit-issuing authority when requested to do so by the permit-issuing authority in interpreting and applying the standards of the Ordinance to the construction, use or land coverage for which the permit application has been made.

4.34 The permit-issuing authority shall notify the Agency of all permits issued by it for any construction or use within the Lake Tahoe region. All permits issued and reported to the Agency shall be reviewed by the Agency staff, and all permits required pursuant to Section 4.10(2) shall be reported by the staff with

staff recommendations to the governing body of the Agency for its review and action as provided in Section 4.32. The staff report and recommendations shall be available to the public at least 5 days prior to the meeting of which the permit issued pursuant to Section 4.10(2) is reviewed by the Agency. Reference to the permit shall be made in the agenda of such meeting and the applicant and other interested persons shall be afforded opportunity at such meeting to comment on the permit.

Section 5.00 Nature of Regional Land Use Ordinance

5.10 This section is descriptive and not directory and is only intended to explain in general terms the nature and operation of this Regional Land Use Ordinance which consists of the establishment of ten use districts in conjunction with seven land capability districts within the territory of the Lake Tahoe region.

5.20 This Ordinance includes regulations concerning the uses permissible within each of the ten use districts, and concerning the permissible amounts of land coverage which may be created in connection with any development within each of the seven land capability districts.

Section 7.00 Use Districts

7.10 Regulations indicating the allowable land uses in each district are hereby established as set forth in Sections 7.20 through 7.113. In the cases of those uses listed in Section 7.12 the permit-issuing authority shall require an appropriate administrative permit, in accordance with Section 8.33, before such use shall be authorized. The permitted uses shall include accessory uses consistent with such permitted uses. The permitted uses are stated as illustrative of the types of uses consistent with the Tahoe Regional General Plan. The listings are not intended to be exclusive, except the density limitations set forth in Sections 7.30 through 7.90.

7.11 *General Purposes*

(1) To protect ecologically fragile areas and the quality of the lakes of the Tahoe Region.

(2) To maintain the natural scenic quality of the Lake Tahoe Region.

(3) To assure population levels within the Region that will maintain an equilibrium between the Region's natural endowment and its manmade environment.

7.12 *Uses Requiring an Administrative Permit*

No person shall commence or carry out any of the following uses or activities, or erect any of the following structures, without first having obtained an administrative permit from the permit-issuing authority:

(1) Airports, heliports and landing strips

(2) Batch plants

(3) Bulk Storage

(4) Commercial developments covering three or more acres

(5) Commercial forest products removal

(6) Commercial parking lots

(7) Construction in stream channels

(8) Fish and Wildlife management projects

(9) Developed campgrounds

(10) Educational facilities, general

(11) Electric power plants

(12) Electrical substations

(13) Golf Courses

(14) Harbors

(15) Hotels, Motels and Apartment houses of five or more units

(16) Marinas

(17) Medical facilities

(18) Mobile home parks

(19) Organized recreation camps

(20) Multiperson dwellings

(21) Outdoor amusement facilities

(22) Outdoor recreation concessions

(23) Overhead or underground utilities, but excluding service connections

(24) Public services

(25) Highways, roads and structures

(26) Sewage treatment plant

(27) Water storage tanks and reservoirs

(28) Water treatment plant

(29) Quarries

(30) Recreation vehicle park

(31) Religious facilities

(32) Radio, TV and telephone relay stations and transmission lines and structures

(33) Skiing facilities

(34) Private stream crossing

(35) Solid waste transfer stations

(36) Transportation facilities

(37) Wrecking yards

7.13 *Limitations on Height*

No building or other structure erected in any land use district shall have a height greater than that specified below except that the permit-issuing authority, by administrative permit pursuant to Section 8.33, may authorize a greater height to the extent that the permit-issuing authority determines that (1) provision has been made for protection from fire hazards and against aviation accidents; (2) consideration has been given to the protection of view and to the character of the neighborhood; (3) proper provision has been made for light and air; and (4) such greater height will better promote the protection of the environment in the area. Only those administrative permits that allow a building or other structure of a height of 45 feet or more shall be subject to Agency review pursuant to Section 4.32. Appurtenances such as chimneys and vents may be be erected to a fifteen (15) percent greater height than specified below. Building height shall be the vertical dis-

tance from the grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the average height of the highest gable of a pitch or hip roof. Grade is the average of the finished ground level at the center of all walls of a building or structure.

Use District	*Permitted Height*
General Forest	35 feet
Recreation	35 feet
Rural Estates	35 feet
Low Density Residential	35 feet
Medium Density Residential	35 feet
High Density Residential	35 feet
Tourist Commercial	40 feet
General Commercial	40 feet
Public Service	40 feet
Conservation Reserve	As approved in a specific plan

The above table of permitted heights may be modified with respect to residential buildings by permitting height limits of 35 feet plus 1 foot for each 2% of cross slope, measured at the building site coverage.

7.14 *Reclassification of Privately Owned Lands Within General Forest and Conservation Reserve Districts*

After two years from the effective date of this Ordinance, an owner of lands within either the General Forest District

or the Conservation Reserve District may apply, and the Agency shall then consider, whether to reclassify the applicant's lands to a less restrictive land use classification. In the event of such reclassification, either by an amendment of the Regional Plan or in any other appropriate manner, said lands shall nevertheless be subject to the Land Capabilities Map in effect on the date of reclassification.

(1) *Residential:*

(a) Single family dwelling units up to 15 dwelling units per acre;

(b) Multiperson dwellings not to exceed facilities for 40 persons per acre;

(c) Mobile home parks for permanent residences up to 8 mobile homes per acre.

(2) *Tourist Residential:* None

(3) *Outdoor Recreation:*

(a) All those permitted in the Medium Density Residential District.

(4) *Resource Management and Agriculture:*

(a) Forest management programs.

(5) *Public and Quasi-Public:*

(a) All those permitted in the Medium Density Residential district;

(b) Cultural facilities.

(6) *Commercial:*

(a) All those permitted in the Medium Density Residential district;

(b) Professional offices.

7.73 *Limitations on Land Coverage*

No person shall create land coverages in excess of the limits set forth in Section 6.20.

7.80 *Tourist Commercial District*

7.81 *Specific Purposes:*

(1) To provide adequate space for motels, hotels and related facilities to house and provide services for tourist visitors to the Region in appropriate locations.

7.82 *Permitted Uses:*

None but the following uses, or those allowed pursuant to an administrative permit issued in accordance with Section 8.33 which are found to be appropriate and similar in nature, shall be permitted:

(1) *Residential:*

(a) Single family dwelling units up to 15 dwelling units per acre;

(b) Multiperson dwellings not to exceed facilities for 40 persons per acre;

(c) Mobile home parks for permanent residences up to 8 mobile homes per acre.

(2) *Tourist Residential:*

(a) Transient dwelling units up to 40 units per acre, provided that up to 10% of such dwelling units contained in any motel or other development devoted to the provision of transient dwelling units may include kitchen facilities;

(b) Recreation vehicle parks up to 15 mobile homes per acre.

(3) *Outdoor Recreation:*

(a) All those permitted in the High Density Residential District;

(b) Skiing facilities;

(c) Outdoor amusement facilities.

(4) *Resource Management and Agriculture:*

(a) Forest management program.

(5) *Public and Quasi-Public:*

(a) All those permitted in the High Density Residential district;

(b) Transportation facilities.

(6) *Commercial and Industrial:*

(a) All those permitted in the High Density Residential district;

(b) Indoor amusement facilities;

(c) Limited commercial;

(d) Service stations.

(3) In the case of an application pursuant to Section 8.25(3), the Land Capability Report need establish only that standards of that section have been satisfied.

8.28 *Additional Land Coverage—Variance*

Land coverage in excess of that permitted in any Land Capability District, up to the maximums stated in

this Section, may be authorized by a variance permit issued by the permit-issuing authority, where a literal enforcement of the Ordinance deprives such property or privileges enjoyed by other property in the vicinity and within the same Land Capability District, and the applicant shows that he cannot make any reasonable use of his property if such regulations are applied. Where such conditions are found, the additions permitted shall be the minimum departure from existing maximums reasonably necessary to avoid the deprivation of privileges enjoyed by such other property and to facilitate a reasonable use, and which will not create significant probabilities of substantial harmful environmental consequences. In no case may a variance permit be granted that provides the applicant with any special privileges not enjoyed by other properties in the vicinity. The maximum permissible additions shall not exceed 100% of the limits on land coverage in Land Capability districts 1, 2 and 3, and 10% of the limits on land coverage in Land Capability districts 4, 5, 6 and 7, as set forth in Section 6.20.

8.30 *Effects of Establishing Use Districts*

8.31 Except as provided hereinafter, no person shall, and the permit-issuing authority shall not permit any person to erect any buildings; move, alter, add to, or enlarge any existing building; use, designate, or intend to use for any purpose any land, building or premises in any manner other than is included among the uses listed as permitted in the Use District in which such building, land, or premises is located.

8.32 *Calculation of Densities*

The number of dwelling units per acre permitted in a Rural Estate, Low, Medium or High Density Residential, and Tourist Commercial District, and transient dwelling units per acre permitted in a Tourist Commercial and Commercial District, shall be determined in the first instance on the dwelling units per acre permitted in the Use District in which the land is located. Such number of permitted dwelling units per acre may be limited below the maximums expressed by virtue of the limitations on land coverage applicable within the Land Capability District within which the land is

located. In addition to the foregoing, the area upon which the appropriate density calculation is based shall not include existing bodies of water such as lakes and ponds. Densities up to 10% in excess of the maximums permitted may be authorized by the permit-issuing authority where the applicant's plans provide for a total amount of land coverage, as calculated in accordance with Sections 8.22 and 8.23, 5% or more below the baseline maximums established for the Land Capability Districts within which the land is located, and it is determined that increase in density will not cause substantial problems of traffic congestion or inadequacy of public services.

8.33 *Administrative Permits*

Administrative permits may be issued for any of the uses or purposes for which such permits are required by the terms of this Ordinance. Such permit may be granted only if it is found by the permit-issuing authority that the establishment, maintenance, or operation of the use or purpose in the particular case is not detrimental to health, safety, peace, morals, comfort and

general welfare of persons residing or working in the neighborhood of such proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the Region, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters.

8.34 *Variances*

Variances from the terms of the Use Regulations established in this Ordinance shall be granted by the permit-issuing authority only if it is found that because of special circumstances applicable to the property, including size, shapes, topography, location or surroundings, the strict application of the use regulations deprives such property of privileges enjoyed by other property in the vicinity and within the same Use District, and the applicant shows that he cannot make any reasonable use of the property if such regulations are applied. Where such conditions are found, the variance permitted shall be the minimum departure from existing regulations necessary to avoid such

deprivation of privileges enjoyed by such other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. In no case may a variance be granted that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity.

Section 9.00 Non-Conforming Uses, Structures and Alterations

9.11 *Existing Uses and Structures*

Uses of land and structures that do not conform to the regulations established by this Ordinance and which lawfully existed on February 10, 1972, or which are to be created in connection with structures for which a valid building permit was issued on or before February 10, 1972 and upon which construction has commenced as allowed by such permit prior to February 10, 1972, or which are to be created in connection with a subdivision the final map of which was approved by the appropriate local government and where necessary by the Agency within five (5) years prior to

February 10, 1972, or which are to be created in connection with a subdivision the final map of which was approved by the appropriate local government more than five (5) years prior to February 10, 1972 and there has been construction of roads, sewers, or other substantial facilities serving the subdivision, or the posting of performance bonds assuring such construction prior to February 10, 1972 are non-conforming uses and structures and a use to be created it shall occupy no greater than planned at the time such building permit was issued or subdivision approved. If any such use ceases for a period of one (1) year, subsequent use of such land shall be in conformity with the regulations contained in this Ordinance.

9.30 *Creation of Lots or Parcels*

No person shall create a lot or parcel upon which there will exist more than the maximum number of dwelling units or maximum percentage of land coverage permitted by this Ordinance, *provided, however,* that more than such maximums may be created in connection with a subdivision, the tentative map of which is approved by the Agency pursuant to the provisions of the Tahoe Regional Planning Agency Subdivision Ordinance.

9.31 Where a lot or parcel is divided, the person making the division shall calculate the number of dwelling units and land coverage allocable to each of the resulting lots or parcels and shall note such allocations in the deeds to such resulting lots or parcels and on the lot or parcel map, if any, that is used to record such division.

Section 10.00 Compact Limitations

The provisions of this Ordinance shall be subject to the express requirement contained in Article VI(a) of the Compact (PL 91-148) which requires that:

"Every plan, ordinance, rule, regulation or policy adopted by the agency shall recognize as a permitted and conforming use any business or recreational establishment which is required by law of the state in which it is located to be individually licensed by the state, if such business or establishment:

(1) Was so licensed on February 5, 1968, or was licensed for a limited season during any part of the calendar year immediately preceding February 5, 1968.

(2) Is to be constructed on land which was so zoned or designated in a finally adopted master plan on February 5, 1968, as to permit the construction of such a business or establishment."

Section 11.00 Violation of Ordinance

Violation of any provision of this ordinance shall be a misdemeanor.

Section 12.00 Effective Date

This Ordinance shall be effective sixty (60) days after its adoption.

FIRST READING: April 26, 1973

SECOND READING: May 24, 1973

PASSED AND ADOPTED by the Governing Body of the Tahoe Regional Planning Agency at a regular meeting held May 23-24, 1973 by the following vote:

Ayes: Mr. Bray, Mr. Hall, Mr. Stewart, Mr. Henry, Mr. MacKenzie, Mr. Meder

Nays: None

Abstain: None

Absent: Mr. Knisley, Mr. Eagan, Mr. Meneley, Mr. Nagy.

John L. Meder
Chairman

tations: